IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs December 8, 2009

STATE OF TENNESSEE v. JEFFERY C. GRISSOM

Appeal from the Circuit Court for Warren County
No. F-11108 Larry B. Stanley, Jr., Judge

No. M2009-00375-CCA-R3-CD - Filed February 4, 2010

The Defendant, Jeffery C. Grissom, was charged with one count of possession with intent to deliver .5 grams or more of cocaine, a Class B felony. See Tenn. Code Ann. § 39-17-417(c)(1). He was convicted as charged following a jury trial. In this direct appeal, he contends that: (1) the trial court erred in excluding evidence that a State's witness had previously threatened to frame him; and (2) the State presented evidence insufficient to convict him. After our review, we conclude that the trial court erred in excluding evidence of the State's witness' previous threats, but that the error was harmless. We also conclude that the State presented sufficient evidence to convict the Defendant. We accordingly affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the Court, in which ALAN E. GLENN and ROBERT W. WEDEMEYER, JJ., joined.

Trenena G. Wilcher, Assistant Public Defender, McMinnville, Tennessee, for the appellant, Jeffery C. Grissom.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; Lisa Zavogiannis, District Attorney General; and Thomas Miner, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

The events underlying this case began on February 17, 2007. The Defendant's wife, Amy Grissom, testified that she and the Defendant were seeking a divorce and had been separated for some time. They had a five-year-old daughter of whom they shared custody. Ms. Grissom said that the Defendant had their daughter on the evening of February 17, and that they had agreed he would take her only to his mother's house or his grandmother's house. The Defendant had told Ms. Grissom that he would never take their daughter to his sometime residence on Peers Street in McMinnville.

Ms. Grissom went to a bar for a bachelorette party at about 10:00 p.m. on February 17. She had only one or two beers over the course of the night. The Defendant called a few times during the evening; Ms. Grissom ignored the first few calls but finally answered at about 1:00 a.m. on February 18. The Defendant wanted Ms. Grissom to meet him at the Peers Street house. Ms. Grissom became angry because the Defendant had promised not to take their daughter to that house. She hung up the phone. She then left the bar, drove to the Peers Street house, drove into the driveway and around the house, and parked her car.

Ms. Grissom approached the porch door in the back of the house and knocked. A few seconds later, she turned the door handle; the Defendant opened the door from the inside at about the same time. As Ms. Grissom entered the house, she saw that the Defendant was fully dressed and that there were other people inside. She also noticed a few bags of white powder on a counter in the kitchen. They appeared to be sitting on top of an iPod. Ms. Grissom and the Defendant began arguing; the Defendant told Ms. Grissom that their daughter was not there.

They began shoving each other shortly thereafter. The Defendant pushed Ms. Grissom into a laundry room adjacent to the kitchen and stayed in the laundry room with her, refusing to let her leave. Ms. Grissom produced her cell phone and called 911; the Defendant closed the phone once or twice, causing Ms. Grissom to hang up on the 911 operator. Eventually, Ms. Grissom was able to remain on the line; once the Defendant realized Ms. Grissom was calling the police, he released her from the laundry room. She ran outside and waited in her car for police to arrive. The Defendant and others walked in and out of the porch door, yelling that Ms. Grissom should leave. The State introduced recordings of Ms. Grissom's 911 calls, as well as a 911 call by the Defendant complaining that Ms. Grissom broke into the house and would not leave.

Ms. Grissom testified that, a few moments later, she saw the Defendant carry onto the porch the bags of cocaine she had seen on the kitchen counter. The Defendant moved around

the porch as if disposing of the drugs, and he threw one bag into the yard. Ms. Grissom did not see anyone leave the house.

A pickup truck pulled into the house's driveway shortly thereafter, followed almost immediately by a police car. Officer Daniel Clayton of the McMinnville Police Department ("MPD") exited the car and approached Ms. Grissom; she told him she had seen the Defendant rummage around on the porch and throw drugs into the yard.

On cross-examination, Ms. Grissom said that she had never at any time in the past threatened to do harm to herself for the purpose of framing the Defendant for assault.

Officer Clayton testified that he was dispatched to 216 Peers Street in the early morning hours of February 18, having been advised that a husband and wife were involved in a domestic dispute. As Officer Clayton drove up to the house, he noticed a pickup truck between his police car and what he believed to be Ms. Grissom's car; he spoke to the male driver of the pickup truck, who told him that his girlfriend had received a call from the Defendant asking them to come to the house. Officer Clayton proceeded to speak to Ms. Grissom, who explained what had happened, noted the presence of drugs, and showed Officer Clayton her cell phone in order to verify that the Defendant had called her a number of times the previous night and earlier that morning.

Officer Clayton testified that Ms. Grissom told him she had arrived at the house at about 3:00 a.m. believing her daughter to be there, and became irate when she saw there was cocaine present. The Defendant told her the cocaine was not his, grabbed it, and threw it in the trash. Ms. Grissom said she was eventually able to call 911 and leave the house. Officer Clayton said that Ms. Grissom did not seem impaired by drugs or alcohol. A search of her car and purse revealed no contraband.

After speaking to Ms. Grissom, Officer Clayton approached the house's porch door. The Defendant opened the door to speak to Officer Clayton, but would not allow him to enter. The Defendant told Officer Clayton that he was on parole and that Ms. Grissom was trying to frame him. He noted that their altercation began when Ms. Grissom broke into the house, finding him with a woman named Tosha. Officer Clayton asked to speak to Tosha; the Defendant responded that she had left the house on foot, and he said he did not know her last name, phone number, or address.

Officer Clayton also testified that he spoke to the house's other occupants, a man named Avery Deal and a couple from Nashville. They did not give him any helpful information. Pursuant to Ms. Grissom's information, Officer Clayton searched the porch and yard for drugs. He found one baggie of white powder on the windowsill next to the porch

door, a small quantity of snow having been scooped onto it in an attempt at concealment. He found another baggie of white powder between the porch door and its attached screen door. Another officer found two more baggies of white powder next to some bags of garbage near the door by which the Defendant was standing.

Officer Clayton collected the baggies and went to the home of Sergeant Bill Davis, the MPD's drug investigator, and packaged them for shipment to the Tennessee Bureau of Investigation ("TBI"). The State and the Defendant stipulated that TBI tests revealed a total of 7.33 grams of cocaine, a Schedule II controlled substance.

Sergeant Davis testified that he later spoke to the Defendant at the Peers Street house. The Defendant maintained that Ms. Grissom had planted the nearly $800 worth of cocaine. The Defendant admitted he would not pass a drug test. Sergeant Davis also testified that the packaging he saw was consistent with typical cocaine sales in Warren County, and he noted that, in his experience, people do not hold $800 worth of cocaine for personal use, nor do they sell $800 worth of cocaine all at once. Finally, Sgt. Davis opined that Ms. Grissom's description of the iPod on which she saw the baggies of cocaine was consistent with a set of digital scales for measuring drug quantities.

The Defendant chose to call witnesses in his defense. Natosha Evans testified that she was at the Peers Street house early in the morning on February 18, having arrived there with a man named Michael Roby between 10:00 p.m. and midnight the previous night. The Defendant was there when she arrived, as well as another Tosha and her boyfriend, both from Nashville. She did not see any cocaine during her stay at the house.

Ms. Evans had gone to the house because she and the Defendant planned to "be together" romantically. They accordingly went into the kitchen-adjacent bedroom at about 1:00 a.m. Some time thereafter, Ms. Grissom, whom Ms. Evans had never met, came into the bedroom and yelled at Ms. Evans for being with the Defendant. Ms. Evans got out of bed and walked out of the bedroom, passing Ms. Grissom on the way. Ms. Evans noticed that Ms. Grissom smelled of alcohol and was loudly slurring her speech.

Ms. Evans proceeded into the kitchen. She then heard Ms. Grissom say she planned to "get" the Defendant by planting drugs. The Defendant and Ms. Grissom continued to argue for about thirty minutes, during which time Ms. Grissom said she did not care that the Defendant was on probation and threatened to "plant something in this house." Eventually, the Defendant went into the living room and woke up Mr. Roby, who was asleep on the couch. Mr. Roby offered to drive Ms. Evans home. Ms. Evans, who had originally planned to walk home, accepted his offer. They left at about 3:00 a.m.

On cross-examination, Ms. Evans confirmed that the Defendant had called Ms. Grissom twice the previous evening but had lied about his whereabouts. She did not know how Ms. Grissom knew the Defendant was at the Peers Street house. Ms. Evans noted that the Defendant did, in fact, know her phone number and address. She also confirmed that she had not appeared at a preliminary hearing or grand jury hearing in this case, and that she did not give any statements to anyone about this matter until a few days before trial. Ms. Evans explained, however, that she had no contact with the Defendant in the intervening period and did not even know he had been charged with a crime.

The Defendant attempted to ask Erica Hale, a woman in the pickup truck that arrived at the Peers Street house just before Officer Clayton, whether she had ever heard Ms. Grissom "threaten[] to hurt herself and blame [the Defendant] for it." The trial court sustained the State's objection to this testimony on grounds of relevance. On cross-examination, Ms. Hale confirmed that she had plead guilty in the past to one count of promotion of methamphetamine manufacturing.

The Defendant chose to testify in his own defense. He noted that he was still married to Ms. Grissom, although they had been separated for about seven or eight months at the time of the events at issue in this case. In February 2007, the Defendant lived at the Arms Apartments but sometimes stayed at the Peers Street house, which a friend owned. He was in that house early on the morning of February 18, with Floyd Lamont, Tosha Walters, Mr. Roby, and Ms. Evans. Mr. Roby and Ms. Evans arrived between 11:30 p.m. and midnight. Before they arrived, the Defendant had called Ms. Grissom.

The house's occupants were "just hanging out" playing video games and listening to music for much of the evening. Between 1:30 and 2:00 a.m., after the Defendant and Ms. Evans had gone to bed, Ms. Grissom called the Defendant and asked his permission to come over. Ms. Grissom knew that the Defendant had been at the Peers Street house earlier that day; during this call, however, he told her he was somewhere else. Ms. Grissom responded that she had driven by the house and seen Mr. Roby's car. The Defendant reiterated that he was not there and hung up. Ms. Grissom called twice more before the Defendant turned off his phone.

After a short time, the Defendant heard a noise, looked up from his bed, and saw Ms. Grissom standing in the dimly-lit bedroom doorway. The Defendant testified that all the house's doors were locked and that Ms. Grissom must have "credit-carded" the laundry room door to gain entry. He and Ms. Grissom began arguing about the presence of Ms. Evans. Eventually, all three of them left the bedroom simultaneously and entered the kitchen. At some point, Ms. Grissom threatened to plant some drugs. Later, she asked the Defendant to

have Ms. Evans leave so they could speak privately; the Defendant accordingly woke Mr. Roby and asked him to drive Ms. Evans home.

Ms. Grissom then "broke down" on the laundry room floor, acted like she was calling someone, and then hung up. The Defendant walked off and looked for his phone. When he returned, Ms. Grissom was on the line with 911; the Defendant then called 911 to report Ms. Grissom's break-in. Ms. Grissom left the house. Police arrived five to six minutes later.

The Defendant affirmed that there were no drugs in the Peers Street house. He also denied that he went onto the porch or into the yard before police arrived, and suggested that Ms. Grissom's car's position in a covered carport would have obscured her view of the porch in any event. On cross-examination, the Defendant said that, although he was awake at the time, he did not hear or see Ms. Grissom's car pass his bedroom window on the way up the driveway.

The Defendant was convicted of one count of possession of .5 grams or more of cocaine with intent to deliver. He now appeals.

Analysis

I. Exclusion of Erica Hale's Testimony

The Defendant first contends that the trial court erred in the following exchange during the testimony of defense witness Erica Hale:

> [Defense Counsel]: In your encounters with [Ms.] Grissom, have you ever heard her threaten [the Defendant]?
>
> [The State]: Objection.
>
> [Ms. Hale]: Ever heard her what?
>
> [The State]: I object.
>
> [The Court]: What's the relevance of that . . . ?
>
> [Defense Counsel]: She was asked on cross[-]examination if she had ever threatened to hurt herself and blame [the Defendant] and she says no.
>
> . . . .

[The Court]: Overruled. I mean, I'm going to sustain the objection. I'm going to overrule her answering the question.

Ms. Hale attached an affidavit to the Defendant's motion for new trial stating that her "testimony at trial would have been that [Ms.] Grissom has, on several occasions in the past, threatened to set up [the Defendant] or lie to get him in trouble so that he would be sent back to prison." After the issue had been developed further at the hearing on the Defendant's motion for a new trial, the trial court found that "the proffered evidence at trial was to be that . . . Ms. Grissom had threatened to hurt herself previously and blame the Defendant."

Tennessee Rule of Evidence 616 states that a party "may offer evidence by cross-examination, extrinsic evidence, or both, that a witness is biased in favor of or prejudiced against a party or another witness." Of course, "evidence which is not relevant is not admissible." Tenn. R. Evid. 402. Evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Tenn. R. Evid. 401. Trial courts have broad discretion in applying the relevance rules, and we will not overturn their decisions absent an abuse of discretion below. State v. Dubose, 953 S.W.2d 649, 653 (Tenn.1997).

The State argues that Ms. Hale's proffered testimony was irrelevant, reasoning that, while the testimony would have tended to establish Ms. Grissom's prejudice against the Defendant relative to framing him for assault, it would have failed to establish her prejudice against him relative to framing him for cocaine possession. In our view, however, evidence of a witness' willingness to frame a defendant for one crime tends to establish prejudice against that defendant such that the witness might be willing to frame or falsely testify against the defendant for another crime. The State does not contest that the "motive of a witness . . . is always relevant to the main issue." State v. Leach, 148 S.W.3d 42, 56 (Tenn. 2004). We conclude that evidence of Ms. Grissom's willingness to frame the Defendant for any crime was relevant to her motive, and therefore, the credibility of her testimony.

We conclude that the trial court abused its discretion in excluding Ms. Hale's testimony. The State argues that any error was harmless, however, noting that when error is non-constitutional in nature "Tennessee law places the burden on the defendant who is seeking to invalidate his or her conviction to demonstrate that the error 'more probably than not affected the judgment or would result in prejudice to the judicial process.'" State v. Rodriguez, 254 S.W.3d 361, 372 (Tenn. 2008) (citing Tenn. R. App. P. 36(b); State v. Ely, 48 S.W.3d 710, 725 (Tenn. 2001); State v. Harris, 989 S.W.2d 307, 315 (Tenn. 1999)).

We must agree with the State that the trial court's error was harmless. The Defendant was able to offer a substantial amount of other evidence of Ms. Grissom's prejudice against him, largely consisting of his and Ms. Evans' testimony that Ms. Grissom announced on the morning of February 18 her intention to plant drugs at the Peers Street house. This testimony also provided the jury with a detailed alternate explanation of the recovered cocaine's presence outside the house. Further, the Defendant presented witnesses who attacked the basis of Ms. Grissom's knowledge by suggesting that her car was positioned such that she could not have seen any activity taking place on the porch. The jury obviously chose not to credit defense witnesses' testimony. We also observe that the evidence presented to the jury left little room for doubt that Ms. Grissom and the Defendant did not share a harmonious relationship. Under these circumstances, we cannot conclude that the trial court's error more probably than not affected the judgment against the Defendant.

II. Sufficiency of the Evidence

The Defendant also argues that the evidence presented at trial is insufficient to support the jury's verdict that he possessed the cocaine with intent to deliver beyond a reasonable doubt. Tennessee Rule of Appellate Procedure 13(e) prescribes that "[f]indings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt." A convicted criminal defendant who challenges the sufficiency of the evidence on appeal bears the burden of demonstrating why the evidence is insufficient to support the verdict, because a verdict of guilt destroys the presumption of innocence and imposes a presumption of guilt. See State v. Evans, 108 S.W.3d 231, 237 (Tenn. 2003); State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000); State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court must reject a convicted criminal defendant's challenge to the sufficiency of the evidence if, after considering the evidence in a light most favorable to the prosecution, we determine that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999).

On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. See Carruthers, 35 S.W.3d at 558; Hall, 8 S.W.3d at 599. A guilty verdict by the trier of fact accredits the testimony of the State's witnesses and resolves all conflicts in the evidence in favor of the prosecution's theory. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court will not re-weigh or re-evaluate the evidence. See Evans, 108 S.W.3d at 236; Bland, 958 S.W.2d at 659. Nor will this Court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. See Evans, 108 S.W.3d at 236-37; Carruthers, 35 S.W.3d at 557.

Tennessee Code Annotated section 39-17-417(a)(4) states that it is an offense for a defendant to knowingly "[p]ossess a controlled substance with intent to manufacture, deliver, or sell the controlled substance." "The term 'possession,' as used in the [controlled substances] statute, embraces both actual and constructive possession." State v. Ross, 49 S.W.3d 833, 845-46 (Tenn. 2001) (citing State v. Transou, 928 S.W.2d 949, 955-56 (Tenn. Crim. App. 1996)).

We conclude the evidence at trial was sufficient to establish that the Defendant knowingly possessed the recovered cocaine. Ms. Grissom's testimony about the Defendant's activities on the porch, followed by the recovery of cocaine from that area, is sufficient to demonstrate that the Defendant actually and knowingly possessed the four baggies. In addition, Sgt. Davis' testimony was sufficient to establish that the Defendant intended to deliver the relatively large amount of cocaine. This issue is without merit.

Conclusion

Based on the foregoing authorities and reasoning, we affirm the judgment of the trial court.

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DAVID H. WELLES, JUDGE